

# Street Tree Ordinance

## **REGULAR**

**NUMBER: 201.2**

**TITLE:** AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 2 (TREE AND PLANTING) OF TITLE X (STREETS AND SIDEWALKS) REGARDING THE ESTABLISHMENT OF COST RECOVERY FOR UNLAWFULLY REMOVED TREES.

**HISTORY:** This ordinance was introduced at a meeting of the City Council of the City of Milpitas on February 15, 1994, by motion of Councilmember Lawson, and was finally adopted at a meeting of said Council on March 1, 1994, upon motion of Councilmember Lawson by the following vote:

AYES: (5) Mayor McHugh and Councilmembers  
Lawson, Lee, Livengood and Skyrud

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST: Gail Blalock, City Clerk

APPROVED: Peter A. McHugh, Mayor

APPROVED AS TO FORM: Dave Larsen, City Attorney

**ORDAINING CLAUSE:** THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS: CHAPTER 2 (TREE AND PLANTING) OF TITLE X (STREETS AND SIDEWALKS) REGARDING THE ESTABLISHMENT OF COST RECOVERY FOR UNLAWFULLY REMOVED TREES IS HEREBY AMENDED TO READ AS FOLLOWS:

## **Chapter 2 - TREE AND PLANTING\***

### **Sections:**

**X-2-1 Title and Purpose**

**X-2-2 Definitions**

**X-2-3 Responsibilities**

**X-2-4 Permits Required**

**X-2-5 Maintenance**

**X-2-6 Other Plantings and Improvements**

**X-2-7 Tree Protection**

**X-2-8 Enforcement**

**X-2-9 Appeals**

**X-2-10 Replacement or Compensation**

\*Prior history: Ord 201, 10/3/78

### **Section 1 Title and Purpose**

X-2-1.01

**Title:** This Chapter shall be known as the "Tree and Planting Ordinance of the City of Milpitas." (Ord. 201.1 [part], 3/1/88)

X-2-1.02

**Purpose:** The City recognizes substantial economic, environmental and aesthetic importance of the trees and plantings within the community. It shall be the City's policy to utilize applicable techniques, methods and procedures required to preserve, when feasible, all trees and plantings on City property, and all protected plantings of significant size, age, and/or benefit to the community at large.

It is in the best interests of the citizens and public that a comprehensive plan be developed to regulate the planting and maintenance of trees and other plantings in or adjacent to streets and within easements, in rights-of-way and other public places within the City, to provide for orderly development and protection of public facilities, and to regulate the removal of trees that contribute significantly to the value of land, preservation of resources, and quality of life in the City

## **Section 2 Definitions**

For the purpose of this Chapter, certain words or phrases are defined. (Ord. 201.1 [part], 3/1/88)

### **X-2-2.06**

"Approved Street Tree" shall mean any tree hereafter planted within any street right-of-way or easement adjacent thereto which conforms to the approved Street Tree List and which is planted in accordance with this Chapter. "Approved Street Tree" shall also mean any existing tree within the right-of-way or easement adjacent thereto which conforms to the established species and location in any given area, and which was planted as a required street tree under the provisions of any improvement agreement, or as otherwise approved by the Public Works Director, or any tree of the approved species and in an acceptable location which was or may be planted as a replacement therefor. (Ord. 201.1 [part], 3/1/88)

### **X-2-2.07**

"Unapproved Street Tree" shall mean any tree planted within street right-of-way or easements or in proximity thereto, or on adjoining property which does not qualify as a street tree. (Ord. 201.1 [part], 3/1/88)

### **X-2-2.08**

"Other Plantings" shall mean any shrubs, grass or ground cover planted within street right-of-way or easements or in proximity thereto, or on adjoining property. (Ord. 201.1 [part], 3/1/88)

### **X-2-2.10**

"Heritage and Specimen Planting" shall mean any tree, grove, shrub, hedge or other planting which is determined to have special significance to the community, as:

- a) A planting of historic value, unique quality, significant girth or height, or protected species identified in the development process as a City resource.
- b) A planting designated by resolution of the City Council to be of historical value or community benefit.
- c) A planting located on the Register of Cultural Resources.

### **X-2-2.11**

"Tree Trimming" shall refer to the removal of plant parts to control growth and enhance performance or function in the landscape by developing and preserving tree structure and health. The removal of water sprouts, sucker growth, and hanging limbs constituting less than 10% of the tree canopy is not considered tree trimming according to the provisions of this Chapter.

### **Section 3 Responsibilities**

#### **X-2-3.01**

Public Works Director: The Public Works Director shall be responsible for administering and enforcing the provisions of this Chapter. He or she shall undertake such maintenance and planting programs and controls as may be required to carry out the provisions of this Chapter consistent with facilities and resources available. He or she may designate certain representatives to administer any portion of this Chapter. (Ord. 201.1 [part], 3/1/88)

#### **X-2-3.02**

Approved Street Tree List: The Public Works Maintenance Manager shall prepare an "Approved Street Tree List" containing the botanical and common names of all trees hereafter authorized to be planted in streets or easements adjacent thereto. Said list shall be on file in the office of the Public Works Maintenance Manager and may be revised from time to time by the Public Works Maintenance Manager to include other suitable trees, trees to be planted for evaluation purposes only, or to exclude trees deemed to be unsuitable. All trees hereafter planted in any street or easement adjacent thereto or which may encroach upon such street right-of-way shall conform to the Approved Street Tree List, except as may be specifically approved under Subsection 4.01-1. (Ord. 201.1 [part], 3/1/88)

#### **X-2-3.02**

Tree Replacement Fund: The Public Works Maintenance Manager shall maintain a Tree Replacement Fund. All fees assessed for permits or infractions of this Chapter will be deposited into the Street Tree Replacement Fund and utilized at the discretion of the Public Works Maintenance Manager for reforestation of the City's tree population.

### **Section 4 Permits Required**

#### **X-2-4.01**

Planting Permits: It shall be unlawful for any person to plant or cause to be planted any tree in any public right-of-way without first obtaining a written permit from the Public Works Maintenance Manager, except as provided in Subsection 4.01-1. Said permit shall specify the location and variety of trees or plants to be planted.

#### **X-2-4.01-1**

Street trees or other plantings which are required to be planted by a subdivider or developer in accordance with plans and specifications approved by the City, or as part of a project may be planted without a permit, provided however, that such trees and plantings shall conform to such plans and specifications and shall be planted under the supervision of the Public Works Maintenance Manager. (Ord. 201.1 [part], 3/1/88)

#### **X-2-4.02**

Permit Required for Removal: It shall be unlawful for any person other than City personnel in the performance of their duties to remove any street tree, protected tree, or heritage planting without first applying for a permit from the Public Works Maintenance Manager. The Public Works Maintenance Manager may determine that a tree authorized for removal be replaced by the permittee through the compensation methods described in Section X-2-10.01, subsections a and b. (Ord. 201.1 [part], 3/1/88)

#### **X-2-4.03**

Permit Required for Trimming: It shall be unlawful for any person, other than City personnel, to trim any approved street tree without first obtaining a permit from the Public Works Maintenance Manager. The permit shall be issued when the Public Works Maintenance Manager finds that the trimming is necessary and that the proposed method is satisfactory. A permit is not required for removing sucker growth, watersprouts, minor limbs causing obstructions, or for the removal of less than 10% of the tree canopy. (Ord. 201.1 [part], 3/1/88)

## **Section 5 Maintenance**

### **X-2-5.01**

Care and Maintenance: The Public Works Maintenance Manager shall initiate and administer a program to provide for the planting, maintenance, care, removal, and replacement of official street trees, consistent with resources available.

#### **X-2-5.01-1**

The City may require the property owner to remove, thin, prune, spray, stake, and otherwise maintain street trees, as may be deemed necessary and feasible. The property owner shall water and may fertilize street trees adjacent to his or her property, provided however, the City may perform necessary care in selected non-residential areas, along undeveloped property, or in planting areas separated from adjoining property by a fence required as a condition of development. All incurred costs are to be borne by the property owner. (Ord. 201.1[part], 3/1/88)

#### **X-2-5.02**

Removal of Trees or Plantings in Public Right-of-Way: The City may remove any other planting which constitutes a hazard or may endanger the health, well-being or property of the public or which constitutes an obstruction to the vision of traffic. Said removal shall not be made, however, without prior notice to the property owner and an opportunity to be heard as provided for in Section X-2-8.02, unless the Public Works Maintenance Manager determines in his or her sole discretion that removing said tree or planting is immediately necessary for the protection of the public peace, health or safety. (Ord. 201.1[part], 3/1/88)

#### **X-2-5.03**

Tree Replacement: The City may replace an approved street tree or other planting which has died or may have been removed for any reason, or plant additional street trees deemed appropriate consistent with available resources. (Ord. 201.1[part], 3/1/88)

#### **X-2-5.04**

Maintenance of Unapproved Street Tree or Other Planting: The City will not be responsible for maintaining unapproved street trees or other plantings in or adjacent to or overhanging any street. Maintenance of such other planting shall be the responsibility of the property owner, provided, however, the City may prune, trim, or remove such other plantings if the property owner refuses to maintain the plantings himself or herself, in accordance with Section X-2-8.02. (Ord. 201.1[part], 3/1/88)

**X-2-5.06 Abuse or Mutilation:** It shall be unlawful for any person to break, destroy, or mutilate any approved street tree, or tree stake, or any public tree, shrub or plant in any public place including parks, or to set fire or permit any fire to cause damage to any portion of any street tree or other public planting; or to attach or place any rope or wire (other than one used to support a young or broken tree), sign, poster or other device on any street tree; or to permit or allow any gaseous, liquid or solid substance which is harmful to such tree to come in contact with any portion of any street tree; or to place or maintain any concrete or other solid substance or impervious membrane so as to impede free access of water or air to the roots. No solid paving or impervious membranes shall be placed closer than twenty-four inches (24") from the edge of any approved street tree. (Ord. 201.1[part], 3/1/88)

## **Section 6 Other Plantings and Improvements**

### **X-2-6.01**

Responsibility for Other Plantings: The person owning or occupying the adjacent property shall be responsible for planting and maintenance and care of any plantings other than approved street trees in any area in the street between the curb and right-of-way or easement (including, but not limited to weeding, trimming, spraying and watering).

**X-2-6.01-1**

Exception: The City shall maintain those planting areas within the street which are developed and landscaped as a public improvement. (Ord. 201.1[part], 3/1/88)

**X-2-6.02**

Regulations for Other Plantings: The property owner may plant in planting strips and easements various plantings such as lawn, ivy, various perennials or annuals, or shrubs not to exceed two feet (2') in height and which will not interfere with the functioning of any curb, gutter, sidewalk, water meter, fire hydrant, or other public facility, and will not interfere with or impair the growth of any approved street tree, and will not constitute a public nuisance as described in Section 8.

**X-2-6.02-1**

Exception: No person shall plant or cause to be planted any planting in any area of the public street developed and landscaped as a public improvement and maintained by the City. (Ord. 201.1[part], 3/1/88)

**Section 7 Tree Protection****X-2-7.01**

Existing Trees Protected: It shall be unlawful to remove existing trees within the City except in accordance with Subsection X-2-4.02.

**X-2-7.01-1**

Trees protected in the Section are:

- (a) All trees which have a fifty-six inch (56") or greater circumference of any trunk and are located on developed residential property.
- (b) All trees which have a thirty-seven inch (37") or greater circumference of any trunk and are located on developed commercial or industrial property.
- (c) All trees which have a thirty-seven inch (37") or greater circumference of any trunk, when removal relates to any transaction for which zoning approval or subdivision approval is required.
- (d) Any tree that existed at the time of a zoning or subdivision approval and was a specific subject of such approval or otherwise covered by subsection (b) above.
- (e) All trees which have a thirty-seven inch (37") or greater circumference of any trunk and are located on a vacant lot, undeveloped or underdeveloped property.
- (f) All heritage trees and specimen plantings as defined in Section X-2-2.10.

**X-7.01-2**

Measurement of circumference for the purpose of applying Subsection 2-7.01-1 shall be made with a taut tape, four feet six inches above the ground. (Ord. 201.1[part], 3/1/88)

**Section 8 Enforcement**

**X-2-8.01** Abatement by Trimming on Public Right-of-Way: The Public Works Maintenance Manager shall be empowered to authorize trimming of any approved street tree, unapproved street tree, or other planting in the public right-of-way or easement without prior notice to the property owner, if the Public Works Maintenance Manager determines in his or her sole discretion that the approved street tree, unapproved street tree, or other planting constitutes an immediate hazard to the public peace, health or safety and that trimming said street tree or other planting is immediately necessary for the protection of the public peace, health or safety. All incurred costs to be recovered in accordance with Section X-2-8.02. (Ord. 201.1[part], 3/1/88)

**X-2-8.02**

Public Nuisance on Private or Public Property: Any approved street tree, unapproved street

tree, or other planting growing on public or private property which interferes with the use of or which endangers any public sewer, sidewalk, approved street tree, street or other facility or which impairs traffic visibility or which is maintained in violation of the provisions of this Chapter, may be declared a public nuisance by the City Council after a public hearing upon ten days notice in writing to the property owner given in accordance with provisions of Section 1-20-2.02 of the Milpitas Municipal Code. Upon a declaration by the City Council that said approved street tree or unapproved street tree or other planting constitutes a public nuisance, the City Council shall direct the Public Works Director to abate the same, to maintain a record of the costs of said abatement, to report the costs of said abatement to the property owner in writing within thirty (30) days with a demand for payment within thirty (30) days of demand. (Ord. 201.1[part], 3/1/88)

#### **X-2-8.03**

Collection on Tax Roll: In the event that the cost of abatement is not paid by the property owner within the period required, the amount of the cost of abating such nuisance shall constitute special assessments against such respective lots or parcels of land, and after thus made and confirmed, shall constitute a lien on such property for the amount of such assessments until paid. The Public Works Director shall cause the amount of the assessment to be entered on the tax assessment roll opposite the description of the particular property, and shall be collected together with all other taxes thereon upon the property. Thereafter, such amount shall be collected on said property and shall be subject to the same penalties and interest and the same procedure and sale in the case of delinquency as provided for said taxes. All laws and ordinances applicable to the levy, collection, and enforcement of taxes are hereby made applicable to such special assessment. (Ord. 201.1[part], 3/1/88)

#### **X-2-8.04**

Abatement in Accordance with Procedures Set Forth in Section 1-20 of the Milpitas Municipal Code: As an alternative to the procedures set forth in Section 8.03 of this Chapter, the Public Works Director or anyone acting under his or her direction or authority shall be empowered to commence abatement proceedings in accordance with the provisions of Section 1-20-4 to and including Section 1-20-4.18 of the Milpitas Municipal Code. (Ord. 201.1[part], 3/1/88)

**X-2-8.05** Abatement by Judicial Action: The City Attorney shall, upon authorization from the City Council, commence an action in a Court of competent jurisdiction to abate any approved street tree, unapproved street tree, or other planting determined by the City Council to constitute a nuisance together with damages therefor. (Ord. 201.1[part], 3/1/88)

**X-2-8.06** Remedies Not Exclusive: The remedies provided for in this Chapter shall be cumulative and not exclusive and shall be in addition to such other remedies or penalties as are provided by law (See Section 1-14.09 et. seq. of the Milpitas Municipal Code). (Ord. 201.1[part], 3/1/88)

#### **X-2-8.07**

Right to Enter Property: Officers and employees of the City shall be empowered to enter real property at reasonable times to carry out the provisions of this Chapter. (Ord. 201.1[part], 3/1/88)

### **Section 9 Appeals**

#### **X-2-9.01**

Any person aggrieved by an act or determination of the Public Works Maintenance Manager or his or her designated representative in the exercise of the authority herein granted may appeal in writing to the Public Works Director. (Ord. 201.1[part], 3/1/88)

#### **X-2-9.02**

Any person aggrieved by an act or determination of the Public Works Director in the exercise of the authority herein granted may appeal in writing to the City Council in accordance with

the procedure set forth in Section 5, of Chapter 20, Title 1, of the Milpitas Municipal Code.  
(Ord. 201.1[part], 3/1/88)

## **Section 10 Replacement or Compensation**

### **X-2-10.01**

In lieu of being prosecuted for unlawfully removing or causing damage to any City street tree or heritage planting, in violation of this chapter, a person may be allowed to do the following, at the discretion of the Public Works Maintenance Manager:

- (a) Replace the unlawfully removed tree with one or more trees which, in the opinion of the Public Works Maintenance Manager, will provide comparable economic, aesthetic, or environmental value at the site, or
- (b) Reimburse the City the value of the removed or damaged tree as determined by an arborist certified by the International Society of Arboriculture utilizing the current edition of the "Guide for Plant Appraisal, International Society of Arboriculture". Funds shall be deposited in the Tree Replacement Fund, or
- (c) A combination of the above as determined by the Public Works Maintenance Manager.

(Ord. 201.1[part], 3/1/88)

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